

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DR. MORGAN REYNOLDS ON BEHALF OF THE UNITED
STATES OF AMERICA,

Plaintiff/Relator,

-against-

07 CIV 4612 (GBD)(DF)

SCIENCE APPLICATIONS INTERNATIONAL, CORP.;
APPLIED RESEARCH ASSOCIATES, INC.; BOEING;
NUSTATS; COMPUTER AIDED ENGINEERING
ASSOCIATES, INC.; DATASOURCE, INC.; GEOSTAATS,
INC.; GILSANZ MURRAY STEFICEK LLP; HUGHES
ASSOCIATES, INC.; AJMAL ABBASI; EDUARDO
KAUSEL; DAVID PARKS; DAVID SHARP; ANIELLE
VENEZANO, JOSEF VAN DYCK; KASPAR WILLIAM;
ROLF JENSEN & ASSOCIATES, INC.;
ROSENWASSER/GROSSMAN CONSULTING
ENGINEERS, P.C.; SIMPSON GUMPERTZ & HEGER, INC.;
S.K. GHOSH ASSOCIATES, INC.; SKIDMORE, OWINGS &
MERRILL, LLP; TENG & ASSOCIATES, INC.;
UNDERWRITERS LABORATORIES, INC.; WISS,
JANNEY, ELSTNER ASSOCIATES, INC.; AMERICAN
AIRLINES; SILVERSTEIN PROPERTIES; AND UNITED
AIRLINES,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS WISS, JANNEY
ELSTNER ASSOCIATES INC. AND ROLF JENSEN & ASSOCIATES, INC.'s
MOTION TO DISMISS THE COMPLAINT**

HINSHAW & CULBERTSON LLP
Attorneys for Defendants
WISS, JANNEY, ELSTNER ASSOCIATES, INC. and
ROLF JENSEN & ASSOCIATES, INC.
780 Third Avenue, 4th Floor
New York, New York 10017
(212) 471-6200

PRELIMINARY STATEMENT

Defendants WISS, JANNEY, ELSTNER ASSOCIATES, INC. (“WJE”) and ROLF JENSEN & ASSOCIATES, INC. (“RJA”) move to dismiss the Complaint, pursuant to Fed. R. Civ. P. 12(b)(1) and 9(b), respectively, and hereby adopt and incorporate herein the arguments set forth in the motion papers submitted by co-defendant APPLIED RESEARCH ASSOCIATES, INC. (“Applied Research”). As more fully argued therein, plaintiff’s claims are statutorily barred and plaintiff has failed to allege fraud with particularity. In addition, as also argued therein, plaintiff lacks standing to assert common law claims on behalf of the United States Government. For all of these reasons, plaintiff’s Complaint must be dismissed.

STATEMENT OF FACTS

Defendants refer the Court to defendant Research Associate’s memorandum of law in support of its motion to dismiss the Complaint for a full recitation of the facts and applicable law.

In essence, plaintiff brings a claim under the False Claims Act, alleging that defendants manipulated and provided false information to the United States Government during the investigation of the events surrounding the collapse of the World Trade Center on September 11, 2001 conducted by the National Institute of Standards and Technology (“NIST”). (Declaration of Philip Touitou, dated October 9, 2007 (“Touitou Decl.”), 3). However, the Complaint is devoid of any specific allegations against defendants WJE and RJA. Touitou Decl., ¶ 7.

Defendant WJE is a corporation organized and existing under the laws of the State of Illinois. Touitou Decl., ¶ 4. It is engaged in the business of professional engineering and architecture, and maintains a principal office at 330 Pfingsten Road, Northbrook, Illinois 60062. *Id.* Defendant RJA is also a corporation organized and existing under the laws of the State of Illinois. Touitou Decl., ¶ 5. It is engaged in the business of engineering, focusing on fire

protection, and maintains a principal office at 600 W. Fulton Street, Suite 500, Chicago, Illinois 60661. *Id.* Both WJE and RJA provided consulting services to NIST in regards to inquiries which NIST was conducting and examined artifacts related to that investigation. Touitou Decl., ¶ 6.

Other than general and conclusory allegations raised by plaintiff, there no specific allegations against defendants WJE and RJA concerning their actions and/or omissions from which liability may arise. Therefore, the Complaint should be dismissed against them.

ARGUMENT

POINT I

DEFENDANTS WJE AND RJA JOIN DEFENDANT RESEARCH ASSOCIATES' MOTION TO DISMISS ON THE SAME GROUNDS SET FORTH THEREIN

Dismissal of this action is proper because, as more fully argued in the papers filed by co-defendant Research Associates, the Court lacks subject matter jurisdiction over this lawsuit as a result of the statutory bars under §§ 3730(b)(5) and 3730(e)(4) of the Federal Claims Act. Moreover, plaintiff failed to plead his allegations of fraud with particularity as required by Rule 9(b) of the Federal Rules of Civil Procedure. Finally, plaintiff lacks standing to assert state law claims on behalf of the United States Government. For these reasons, as more fully set forth in the motion papers submitted by co-defendant Research Associates that are adopted and incorporated herein, WJE and RJA request that the Complaint be dismissed.

CONCLUSION

For the foregoing, as more fully set forth in the papers submitted by Research Associates in support of its motion to dismiss herein, it is respectfully requested that the Court dismiss the Complaint in its entirety, with prejudice and with costs.

Dated: New York, New York
October 9, 2007

HINSHAW & CULBERTSON LLP

By: 

Philip Touitou

Concepcion A. Montoya

Attorneys for Defendants

WISS, JANNEY, ELSTNER ASSOCIATES, INC.

and ROLF JENSEN & ASSOCIATES, INC.

780 Third Avenue, 4th Floor

New York, New York 10017

(212) 471-6200